

Regular Session, 2009

HOUSE BILL NO. 140

BY REPRESENTATIVES CHANEY, EDWARDS, AND ROSALIND JONES

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/PARENTAL RIGHTS: Provides for the relationship of parent and child

1 AN ACT

2 To enact Civil Code Articles 178, 179, 199, and 200, relative to filiation; to authorize the
3 Louisiana State Law Institute to provide comments to Civil Code Article 186 and to
4 include those comments in this Act; to authorize the Louisiana State Law Institute
5 to redesignate and rename the headings of Chapters 1 through 4 of Title VII of Book
6 I of the Civil Code and the headings of the Sections and Subsections within those
7 Chapters; to provide for the establishment of filiation; to provide for the effect of
8 adoption; to provide for the adoption of minors; to provide for retroactive
9 application; to provide a special effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Articles 178, 179, 199, and 200 are hereby enacted to read as
12 follows:

13 Title VII. Parent and Child

14 Chapter 1. ~~Proof of Maternity~~ Filiation

15 Art. 178. Definition

16 Filiation is the legal relationship between a child and his parent.

17 Revision Comment - 2009

18 This Article is new but the definition of *filiation* is consistent with doctrine.
19 See J.R. Trahan, *Glossae on the New Law of Filiation*, 67 LA. L. REV. 387, 388 n. 1
20 (2007); and Katherine Shaw Spaht and William Marshall Shaw, Jr., *The Strongest*

Presumption Challenged: Speculations on Warren v. Richard and Succession of Mitchell, 37 La. L. Rev. 59 (1976). *See also* Gérard Cornu, *DROIT CIVIL: LA FAMILLE* No. 195, at 313 (7th ed. 2001); Francesco Messineo, 2 *MANUALE DI DIRITTO CIVILEE COMMERCIALE: DIRITTI DELLA PERSONALITÀ, DIRITTI DELLA FAMIGLIA, DIRITTI REALI* § 62, No. 1, at 145 (9th ed., Milano, 1965); Eduardo A. Zannoni, 2 *DERECHO CIVIL: DERECHO DE FAMILIA* § 793, at 283 (2d ed., Buenos Aires, 1989); Caio Mário da Silva Pereira, 5 *INSTITUIÇÕES DE DIREITO CIVIL: DIREITO DE FAMÍLIA* No. 410, at 173-74 (7th ed., Rio de Janeiro, 1991); and Jean Carbonnier, *DROIT CIVIL: LA FAMILLE: L'ENFANT, LE COUPLE* 181-82 (20th ed. 1999). This Article introduces the subject matter that follows in Title VII, including how the legal relationship of parent and child is established, *see* Civil Code Article 179 (Rev. 2009), *infra*, and the legal consequences thereof.

Art. 179. Establishment of filiation

Filiation is established by proof of maternity or paternity or by adoption.

Revision Comment - 2009

There are two methods for establishing the filiation of a child to his mother and father: by proof that a particular person is his father and a particular person is his mother under the provisions of Chapter 2 or by adoption under Chapter 3. Proof of maternity or paternity may consist of evidence including factual circumstances that create presumptions of paternity, testimony, documents, or the results of scientific tests.

* * *

Chapter 3. Filiation by Adoption

Section 1. Effect of Adoption

Art. 199. Effect of adoption

Upon adoption, the adopting parent becomes the parent of the child for all purposes and the filiation between the child and his legal parent is terminated, except as otherwise provided by law. The adopted child and his descendants retain the right to inherit from his former legal parent and the relatives of that parent.

Revision Comments - 2009

(a) This Article does not change the law as to the effect of an adoption. It severs the legal relationship between the person who is adopted and his legal parents and relatives with a few exceptions and establishes the legal relationship of child and parent between the person who is adopted and the adoptive parent.

(b) Among the exceptions to the severance of the legal relationship between the person adopted and his legal parents and relatives are: (1) the retention of the right to inherit by the adopted child from his former legal parent and other relatives of that parent (this Article, second sentence), (2) the retention of the legal relationship between a child who has been adopted and a legal parent if the legal parent is married to the adoptive parent (Children's Code Article 1256 and La. R.S. 9:461), and (3) the right of the parents of a legal parent at the time of the adoption to seek visitation with the child (Children's Code Article 1264).

1 Section 2. Adoption of Minors2 Art. 200. Adoption of minors

3 The adoption of minors is also governed by the provisions of the Children's
4 Code.

5 Revision Comment - 2009

6 Even though the Children's Code regulates extensively the process of the
7 adoption of minors and contains provisions as to the effect of the adoption once a
8 judgment is rendered, the Civil Code also provides for the effect of an adoption. *See*
9 Civil Code Articles 199, *supra*, and 3506(8) (defining *children* to include those who
10 have been adopted).

11 Section 2. The following comments to Civil Code Article 186 are hereby provided
12 as follows:

13 Revision Comments -- 2009

14 (a) This Article clarifies the law. This Article contemplates that a child may
15 be born within three hundred days of termination of a marriage, and the date of his
16 birth may occur after his mother has remarried. *See* former Civil Code Article 186
17 (1870). It, just as prior law did, resolves the dilemma of overlapping presumptions
18 that can arise under Civil Code Article 185 (Rev. 2005).

19 (b) When "dual paternity" is created by the effect of overlapping
20 presumptions, this Article provides that if the first marriage terminates and a second
21 is contracted before the birth of the child, the first husband is presumed to be the
22 father of the child. To do otherwise would be for the law to presume in effect that
23 the mother committed adultery during the first marriage.

24 (c) The last paragraph of this Article is new. The source is German Civil
25 Code § 1600 and, to a lesser extent, Swiss Civil Code Article 257. This provision
26 assures that when the husband to whom the presumption of paternity ultimately
27 applies, or his successor under Civil Code Article 190 (Rev. 2005), has successfully
28 disavowed the paternity of the child, the other husband will be presumed to be the
29 father of the child. Such a result does not necessarily follow without explicit
30 statutory language. Protection of the child from the social stigma of illegitimacy and
31 the necessity of proving paternity justifies the result.

32 (d) Under the last paragraph of this Article, if the presumption that applied
33 to the first husband is rebutted in a disavowal action, then the presumption that had
34 applied to the second husband and been displaced will be resurrected. In fairness to
35 the second husband, however, this provision permits him to disavow the paternity of
36 the child within one year from the day that the judgment of disavowal became "final
37 and definitive," which means final and no longer subject to appeal. Louisiana Code
38 of Civil Procedure Articles 2166 and 2167 describe the effect of these terms.

39 (e) The period of time for instituting the second disavowal action is
40 explicitly peremptive, rather than prescriptive as in Civil Code Article 189 (Rev.
41 2005). The reason the period is peremptive is that the first husband to whom the
42 prescriptive period applied has a year to institute the action with potential
43 suspensions and interruptions and the other husband was notified and made a party
44 to the disavowal action. *See* R.S. 9:401 (2006). The desirability of a relatively short
45 period of time for resolving paternity, and thus the status of the child, justifies the

1 peremptive nature of the time period afforded to the second husband to institute a
2 disavowal action.

3 (f) Indispensable parties to this action include the person presumed to be the
4 father of the child and the person who will be presumed to be the father if the action
5 is successful. See R.S. 9:401 (2006). See, generally, *Ebey v. Harvill*, 647 So.2d 461
6 (La. App. 2 Cir. 1994), where the first husband of the mother, who was the presumed
7 father of the child, was held to be an indispensable party to a paternity action by the
8 mother against the second husband.

9 (g) This Article does not apply to "dual paternity" created by the existence
10 of a presumed father and a biological father to whom the presumption of Civil Code
11 Article 185 (Rev. 2005) does not apply. Such cases are governed by the provisions
12 of Civil Code Articles 197 and 198 (Rev. 2005).

13 Section 3. The Louisiana State Law Institute is hereby authorized to redesignate and
14 rename the headings of Chapters 1 through 4 of Title VII of Book I of the Civil Code and
15 the headings of the Sections and Subsections within those Chapters, as follows:

16 Title VII. Parent and Child

17 Chapter 1. ~~Proof of Maternity~~ Filiation

18 (C.C. Arts. 178 and 179.)

19 Chapter 2. ~~Proof of Paternity~~ Filiation by Proof of Maternity or Paternity

20 Section 1. ~~The Presumption of Paternity of Husband; Disavowal of Paternity;~~

21 ~~Contestation; Establishment of Paternity~~ Proof of Maternity

22 (C.C. Art. 184.)

23 ~~Subsection A. The Presumption~~

24 ~~Subsection B. Disavowal~~

25 ~~Subsection C. Contestation and Establishment of Paternity~~

26 Section 2. ~~Presumption of Paternity by Subsequent Marriage and~~

27 ~~Acknowledgment~~ Proof of Paternity

28 Subsection A. The Presumption of Paternity of Husband; Disavowal of

29 Paternity; Contestation; Establishment of Paternity

30 (C.C. Arts. 185 through 194.)

31 Subsection B. Presumption of Paternity by Subsequent Marriage and

32 Acknowledgment

33 (C.C. Art. 195.)

1 Subsection C. Other Methods of Establishing Paternity

2 (C.C. Arts. 196 through 198.)

3 ~~Section 3. Other Methods of Establishing Paternity~~4 Chapter 3. Filiation by Adoption5 Section 1. Effect of Adoption

6 (C.C. Art. 199.)

7 Section 2. Adoption of Minors

8 (C.C. Art. 200.)

9 Section 3. ~~Chapter 4~~ Adoption of Adults

10 (C.C. Arts. 212 through 214.)

11 Chapter 4. Filiation of Children by Assisted Reproductive Technology [Reserved]

12 Section 4. The provisions of this Act relative to the enactment of Civil Code Articles
13 199 and 200 are declared to be curative and remedial and therefore shall be applied
14 retroactively to January 1, 2009, as well as prospectively.

15 Section 5. This Act shall become effective upon signature by the governor or, if not
16 signed by the governor, upon expiration of the time for bills to become law without signature
17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
19 effective the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Chaney

HB No. 140

Abstract: Provides for the definition of filiation and the effect of adoption.

Proposed law defines filiation as the legal relationship between a parent and child and provides that it is established by proof of maternity, paternity, or adoption.

Proposed law provides that when a child is adopted, the adopting parent becomes the parent of the child for all purposes and specifies that the adopted child and his descendants do retain the right to inherit from the former legal parents and relatives of the child.

Proposed law provides that the adoption of minors is additionally governed by the Children's Code.

Present law (C.C. Art. 186) provides that if a child is born within 300 days from the termination of a marriage, and the mother has remarried, the first husband is presumed to be the father of the child, but if he obtains a judgment of disavow, the second husband is presumed to be the father.

Proposed law retains present law and adds revision comments.

Proposed law redesignates and renames the Chapters, Sections, and Subsections in Title VII of Book I of the Civil Code.

Proposed law provides for retroactive application of Civil Code Articles 199 and 200 of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds C.C. Arts. 178, 179, 199, and 200)